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# Charles Darwin University

## Final Examination

Family Name						
Given Name/s						
Student Number						
Teaching Period	Semester 1, 2019					

LWZ315 – Corporations Law	DURATION	
	Reading Time:	20 minutes
	Writing Time:	120 minutes
INSTRUCTIONS TO CANDIDATES		
<p>Answer ALL questions. All questions are worth 20 marks. Recommended time per question is 40 minutes.</p>		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
No calculators are permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
Any printed material with the exception of CDU Library books	1 x 20 Page Book 2 x Scrap Paper	

THIS EXAMINATION IS PRINTED  
DOUBLE-SIDED.

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Answer **ALL** questions.

Questions should be answered in the Answer Booklet provided.

Marks for each question are indicated. Suggested time allocation for each question is 40 minutes

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### Question 1

In July 2018 Mr Cheatum and Mr Howe registered Cheatum & Howe Accountants Pty Ltd (the Company) to conduct their accounting business. Mr. Cheatum and Mr. Howe were directors and equal shareholders of the Company, and Mr. Howe was the Company's secretary.

In August 2018, the Company entered into a contract with Worldwide Shipping Limited (WSL) to undertake all its accountancy work (the Contract). The Contract was in writing and was executed:

1. by WSL under company seal; and
2. on behalf of the Company, by a Ms. Channing Sly.

ASIC searches of the Company showed that Ms. Sly was not a director or secretary of the Company. Company correspondence signed by Ms. Sly stated her position as "Office Manager". All negotiations and communications in the lead up to the execution of the Contract were conducted through both Mr. Cheatum and Ms. Sly.

After the Contract was entered into, the Company worked exclusively for WSL. On 17 September 2018, the Company issued an invoice to WSL in the amount of \$360,000.00. The September invoice was duly paid by WSL and the proceeds were then paid by the Company to Mr. Cheatum, in repayment of a loan he had made to the Company, on its registration.

By November 2018 the Company and WSL were in serious dispute as to the quality of the accounting services and the amount of fees under the Contract. The Company issued an invoice for \$200,000 to WSL, however WSL declined payment of the invoice on the basis of the ongoing dispute and threatened to issue court proceedings to claim damages.

By December 2018, the Company was experiencing cash flow problems and a creditor of the Company, issued a valid creditor's statutory demand for unpaid debts.

In January 2019, the Company entered into a sale agreement with Creative Accountancy Pty Ltd (CAP) to transfer all its assets to CAP, for a deferred payment of \$50,000.00. No security or guarantees were provided in support of the sale agreement even though the payment was not due until January 2020. The Sale Agreement was executed by:

1. Ms. Sly on behalf of the Company and
2. Mr. Cheatum on behalf of CAP.

ASIC Searches of CAP disclosed that Ms. Sly was the sole director and secretary of CAP and that Cheatum and Howe are the sole shareholders.

On 5 May 2019, a liquidator was appointed to the Company by the Supreme Court of the Northern Territory. The liquidator has formed the preliminary opinion that the Sale Agreement was at less than market value. The liquidator seeks your advice as to:

**Question 1 (cont'd)**

- a) whether the Contract with WSL was properly executed by the Company? (Please ignore any issues of estoppel which may have arisen from WSL's payment of invoices)
- b) whether the Sale Agreement with CAP has been properly executed by both parties;
- c) whether the payment of the \$360,0000.00 to Mr. Cheatum can be recovered from Mr. Cheatum; and
- d) whether the Sale Agreement can be set aside.

(Marks: 20).

## Question 2

National Mac Products Pty Ltd (“NMP”) ran a nut processing business. NMP purchased nuts from farmers across Australia then processed them and on sold the processed nuts for use in confectionary, baking and snack foods. NMP had a substantial market share with 40% of nut farmers selling their nuts to it.

From 2014 until 1 July 2017, Bob Crook was the sole director and secretary and shareholder of NMP. Bob established NMP with a personal loan of \$5 million to NMP. On 1 July 2017 Bob appointed his fiancée Carla Scapegott as a director and secretary and resigned. Bob was subsequently made bankrupt on 8 July 2017. At the time that Carla was appointed a director she had no background in the nut industry and no business experience. Bob told her that she just needed to do whatever he told her and everything would be fine. Carla subsequently sent emails and made payments as Bob advised her. Bob continued to conduct negotiations with farmers and customers on behalf of NMP, securing supply of the raw product and sales contracts.

Since Carla’s appointment NMP paid for the following:

1. Carla and Bob to take a lavish holiday at a five-star resort at a cost of \$50,000 (November 2017);
2. \$80,000 for a birthday celebration for Bob (December 2017); and
3. \$500,000 on renovations for a “home office” at Bob and Carla’s home (paid between March and June 2018).

At the time that these expenses were incurred many of the nut farmers had been waiting months for payment for the nuts that they had supplied to NMP and had issued angry letters of demand for payment. From December 2017, the company accountant Derek Dunrite had advised both Bob and Carla that NMP was insolvent or approaching insolvency. Bob shrugged off this advice stating that it was “usual” for companies involved with farming to “run at a loss for years at a time”. Carla relied on Bob’s opinion.

A liquidator was appointed to NMP in April 2019.

- a) The liquidator seeks your advice as to whether they can recover monies personally from Carla or Bob for breach of duty.

(Marks:16)

- b) ASIC seeks your advice as to what steps it could take to prevent Bob and Carla participating in the management of future companies.

(Marks:4)

Please ignore any claim for breach of the duty of care and diligence in giving your advice.

(Marks: 20)

### Question 3

William and Harry were directors of Big Constructions Ltd (BCP). BCP relied largely on the replaceable rules for its Constitution and has approximately 5000 shareholders. William and Harry, the founders of BCP hold the majority of shares (70%). For the past 20 years, BCP has specialised in the construction of extremely large and lavish properties such as hotels and apartment buildings.

Louis inherited a small parcel of 50 shares in BCP from his father's estate. After working as a volunteer on a housing project in Cambodia for 6 months, Louis became committed to the construction of environmentally sustainable dwellings. Louis has written a series of letters to the Board of BCP, complaining about the company's direction and urging a move to only building "*ethical and sustainable*" construction projects. The directors do not believe that this is in the best interests of BCP and have politely declined Louis' suggestions.

Louis, an activist by nature, wants to recruit other shareholders of BCP to join him in ensuring that the Board changes its mind on sustainability. He plans to contact all shareholders and propose a resolution at the next Annual General Meeting that will direct the Board to cease its current activities and, in future focus solely on "*ethical and sustainable*" construction projects. Louis writes to the directors advising them of his intentions, and then returns to Cambodia, forgetting to update his mailing address.

William and Harry believe that Louis is a nuisance and consider the BCP constitution should be amended to allow for the compulsory acquisition of a shareholder's shares if the shareholder doesn't share the BCP "*vision for the future*". The amendment would allow for the shares to be acquired after an ordinary resolution by the Board and payment of the market value of the shares (as set by an independent valuer).

William and Harry seek your advice as to whether:

- a) The company can be compelled to give a list of members to Louis; (Marks: 3)
- b) Will the resolution proposed by Louis bind the board if it is passed? (Marks: 5)
- c) Can they validly amend the BCP constitution and proceed to acquire Louis shares? You should consider what action Louis may take to prevent this occurring (Marks: 10)
- d) Assume that the notice of the AGM with the proposed resolution on constitutional change was sent by post to Louis at his nominated mailing address in Australia 30 days before the AGM, but due to floods it was not delivered until 1 day before the meeting. Unfortunately, Louis had returned to Cambodia and did not receive the notice of AGM. Does this have any effect on the validity of the proceedings for the meeting? (Marks: 2)